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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 JASON CHARLES KOPP,
12 Plaintiff,
13 v.
14 THOMAS A.,
15 Defendant.
16

No. 2:22-CV-0282-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, who is proceeding pro se, brings this civil rights action pursuant to 42
18 U.S.C. § 1983.

19 On June 6, 2023, the Court directed Plaintiff to show cause why this action should
20 not be dismissed for failure to prosecute by way of default proceedings against the only remaining
21 defendant, Thomas A., who has waived service but not responded to the complaint. Plaintiff has
22 been warned that failure to comply with court orders may result in dismissal of this action.
23 See Local Rule 110. To date, Plaintiff has not filed a response to the order to show cause or
24 otherwise prosecuted his action against Defendant Thomas A.

25 The Court must weigh five factors before imposing the harsh sanction of dismissal.
26 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
27 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
28 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of

1 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
2 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
3 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
4 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
5 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
6 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
7 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an
8 order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
9 1992).

10 Having considered these factors, and in light of Plaintiff's failure to respond to the
11 Court's order to show cause or prosecute this case, dismissal of this action is appropriate.

12 Based on the foregoing, the undersigned recommends that this action be dismissed,
13 without prejudice, for lack of prosecution and failure to comply with court rules and orders.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. Responses to objections shall be filed within 14 days after service of
18 objections. Failure to file objections within the specified time may waive the right to appeal. See
19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 Dated: July 24, 2023



22 DENNIS M. COTA
23 UNITED STATES MAGISTRATE JUDGE
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